IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3994 OF 1993

Sou.Shubhada Haribhau Bagade : Petitioner

V/s.

Sane Guruji Shikshan Sanstha & Ors. : Respondents

...

Mr.Limaye i/b. Mr.R.S.Apte for the petitioner.

Mr.M.H.Solkar, Asstt. Govt. Pleader, for respondent no.3.

...

CORAM : S.A. BOBDE, J.

January 19, 2005.

P.C.:

1. The petitioner's appeal against her termination has been dismissed by the School Tribunal by decision dated 12.2.1992. The petitioner has challenged that order in this Writ Petition.

2. The petitioner was appointed initially by respondent no.1 Education Society on 27.10.1987 for a fixed period from 2.11.1987 to 1.2.1988. After that appointment came to an end, she was reappointed on 10.6.1988 apparently for the period from 13.6.1988 to 30.4.1999. At the time of her appointment, she was admittedly more than 33 years of

age.

3. The petitioner’s services were brought to an end by a letter dated 31.3.1989 which recites that the term of her appointment expired on 30.4.1989.

4. Aggrieved, she preferred an appeal to the School Tribunal. The School Tribunal found that the petitioner’s date of birth is 10.1.1950. Therefore, when she was appointed for the first time in the year 1987, she was more than 33 years of age and, therefore, could not have been employed. This age limit is provided by rule 9(4) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, which reads as follows:-

> "9(4) The age limit for appointment to any post in a school shall be as follows, namely:
>
> (a) for an appointment to be made to any post in a primary school, a candidate shall not be less than 18 years of age and more than 28 years of age, and in the case of candidate belonging to Backward

Classes he shall not be more than 33 years of age:

Provided that, upper age-limit may be relaxed in case of women, ex-servicemen and persons having previous experience with the previous permission of the Deputy Director.

(b) for an appointment to be made to any post in any school other than primary school, a candidate shall not be below the age of 18 years."

The Tribunal found that the age limit was not relaxed by the previous permission of the Deputy Director. The petitioner has not been able to show anything to the contrary. In these circumstances, the learned School Tribunal has held that the petitioner was not entitled to be treated as a permanent employee since section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 applies only to a permanent vacancy which is filled up by a person duly qualified to fill such vacancy.

5. Mr.Limaye, learned counsel for the petitioner, submitted that it was the duty of the management to obtain the permission of the Deputy Director of Education. The learned counsel, however, is not in a position to point out any such duty cast on the Deputy Director. There is, therefore, no merit in this submission and the finding of the School Tribunal that the petitioner was not duly qualified to hold the post is liable to be upheld.

6. Even otherwise, having regard to the fact that the two appointments of the petitioner were made temporarily and for a fixed period, the petitioner is not entitled to be treated as a permanent employee in view of the law laid down by the Supreme court in Hindustan Education Society v. Sk. Kaleem (1998 (2) Bom.C.R. 146). There is thus no merit in this petition which is hereby dismissed.

Sd/-

S.A. BOBDE, J.